HO CHUN KOW

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
CHAN SEK KEONG J
[CRIMINAL REVISION NO. 5 OF 1990]
1 JUNE 1990

CRIMINAL PROCEDURE: *Section 68(1) of the Road Traffic Act [Sing] (RTA) - Whether Court has power to grant disqualification order against first offender - Whether s. 42(1) of the RTA gives Court such power - Difference between charge of "being in charge" of motor vehicle and "driving" one - Effect of proviso to s. 42(1) of RTA - Whether s. 68(1) offence is within the ambit of s. 42(1).*

The accused pleaded guilty and was convicted under s. 68(1) of the Road Traffic Act ("RTA"). He was fined $500 and was disqualified from driving all classes of vehicles for 12 months. It was the accused's first conviction. The accused then applied for a revision to set aside the Magistrate's disqualification order on the ground that there is no power to disqualify an offender on a first conviction under s. 68(1).

The statement of facts which was admitted by the accused showed that the accused failed to have proper control of his car which resulted in an accident. The accused was then subjected to a breathalyser test (which he failed) and it was also discovered that his blood specimen contained a level of alcohol higher than the statutory limit.

The accused submitted that s. 68(1) which provides for the ingredients and punishment of the offence does not provide for disqualification on a first conviction. Section 68(2) however expressly provides for such a punishment but only on a second or subsequent conviction and that the Court must have acted on some other law or provision of the RTA. The only other provision which provides for such a disqualification order is s. 42(1) of the RTA. It was argued that this section did not apply as s. 42(1) deals with the offence in connection with the driving of a motor vehicle whereas s. 68(1) itself makes it clear that a person chargeable thereunder is one who is at the relevant time "is not driving a vehicle".

The learned DPP contended that the undisputed fact was that the accused was driving his car when the collision occurred and just before he was found to be in charge of his motor vehicle.

Held:

[1] The respondent's contentions must fail as it is clear that the offence chargeable under s. 68(1) is one in respect of being in charge of the motor vehicle and not driving it whereas under s. 42(1) the offence is in respect of the driving of the motor vehicle. If the accused is unfit to drive a motor vehicle, he should be charged under s. 67 and not 68(1) of the RTA.

[2] The proviso to s. 42(1) states "except where otherwise expressly provided by this Act"; this means that where the Act expressly provides otherwise, then the question of whether the Court may impose a disqualification order is regulated by those "other" provisions and not by s. 42(1). Section 68(2) is such an "otherwise" provision but it only deals with the second and subsequent convictions and only with offences not in connection with the driving of a motor vehicle.

[3] The Court is satisfied that a s. 68(1) offence is not an offence within the ambit of s. 42(1). Section 42(1) is not attracted by s. 68(2) as s. 68(2) provides for a case which is expressly excepted from s. 42(1).

[4] The Magistrate had no power to make a disqualification order against an offender on a first conviction under s. 68(1) of the RTA.

[Disqualification order set aside.]

Legislation referred to:
Road Traffic Act (Cap 276) [Sing], ss. 42(1), 67, 68, (1), (2)

For the petitioner - Lim Choon Mong
For the respondent/PP - Lee Sing Lit

JUDGMENT

Chan Sek Keong J:

The petitioner pleaded guilty to a charge under s. 68(1) of the Road Traffic Act Cap 276. He was fined S$500 and also disqualified from driving all classes of vehicles for 12 months. It was the petitioner's first conviction under the section. The statement of facts accepted by the petitioner when he pleaded guilty stated that at about 11.45 P.M. on 2 November 1987 the petitioner was driving his car along Commonwealth Avenue when he failed to have proper control of his car which collided with a taxi which came out of a slip road. Both vehicles were slightly damaged but no one was injured. Upon the arrival of the police, the petitioner failed a breathalyser test. His blood specimen was subsequently found to contain 148 mg of ethanol per 100 ml of blood. The statutory limit is 80 mg.

The petitioner has now petitioned this Court to exercise its revisionary power to set aside the disqualification order of the Magistrate on the ground that there is no power to disqualify an offender on a first conviction under s. 68(1) which provides as follows:

> (1) Any person who when in charge of a motor vehicle which is on a road or other public place but not driving the vehicle is unfit to drive in that he is under the influence of drink or of a drug to such an extent as to be incapable of having proper control of a motor vehicle, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$500 or to imprisonment for a term not exceeding 3 months, and in the case of a second or subsequent conviction to a fine not exceeding S$1,000 or to imprisonment for a term not exceeding 6 months or to both:
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> Provided that ... (not relevant) (my emphasis)
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> (2) On a second or subsequent conviction for an offence under this section, the offender shall, unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for a period of 12 months from the date of the conviction from holding or obtaining a driving licence.
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> (3) Where a person convicted of an offence under this section has been previously convicted of an offence under s. 67, he shall be treated for the purpose of this section as having been previously convicted under this section.

The submission of Counsel for the petitioner is simply that s. 68(1) which sets out the ingredients of the offence and also the punishment therefore does not provide for disqualification on a first conviction. It is s. 68(2) which expressly provides for such a punishment but only on a second or subsequent conviction. If the Court has a power to

impose a disqualification order on a first conviction, that power has to be found in some other provision of the Act or some other written law. The only other provision relating to disqualification for road traffic offences is found in s. 42(1) of the Act but that section is expressed to apply only to an offence **in connection with the driving** of a motor vehicle, and s. 68(1) itself makes it clear that a person chargeable thereunder is one who at the relevant time "is not driving the vehicle."

The DPP's submission is that the mandatory disqualification of an offender under s. 68(2) is expressed to be "without prejudice to the power of the Court to order a longer period of disqualification" (which I shall for convenience refer to as the saving clause), and that the saving clause presupposes the existence of a power to disqualify outwith s. 68(2) itself. As the only other provision in the Act which contains the power to disqualify is s. 42(1), the saving clause must have been put in with s. 42(1) in mind. I agree that the syntax of s. 68(2) invites the approach suggested by the DPP. It may even be argued that s. 68(2) is not expressed in terms which empowers the Court to impose the disqualification: rather, it imposes the disqualification by its own terms.

However, the DPP's approach creates its own difficulties. If the saving clause refers to the s. 42(1) power, it may not achieve its intended purpose as s. 42(1) is expressed in terms which does not apply to any offence other than one in connection with the driving of a motor vehicle. Section 42(1) provides as follows:

> 42(1) Any Court before which a person is convicted of any offence in connection with the driving of a motor vehicle may, in any case except where otherwise expressly provided by this Act and shall, where so required by this Act, order him to be disqualified from holding or obtaining a driving licence for life or for such period as the Court thinks fit:
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> Provided that if the Court thinks fit, any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class or description as the motor vehicle in relation to which the offence was committed.

Prima facie, a s. 68(2) offence is not one in connection with the driving of a vehicle. In order to make good his submission, the DPP is driven to contend, which he has done, that the offence committed by the petitioner is one in connection with the driving of a motor vehicle. He contends that the undisputed fact was that the petitioner was driving his car when the collision occurred and just before he was found to be in charge of his motor vehicle.

There are three problems with this contention. The first is that it requires a high degree of manipulation to read the expression "any offence in connection with the driving of a motor vehicle" to include an offence where a person is convicted for being in charge of a motor vehicle and not driving it. The second problem is that if the DPP's construction is correct, it would mean that the existence of the discretionary power of disqualification is dependent not on the nature of the offence but on the circumstances in which the offence is committed. A s. 68(2) offence may be committed by a person in a situation where just before he takes or is in charge of the vehicle, he (i) has driven it whilst unfit to drive due to the influence of drink, (ii) has driven it but fit to drive even though under the influence of drink or (iii) has not driven it for a substantially long period. Of course, a person who is driving a motor vehicle is, *ipso facto*, in charge of it, but in that case, if he is unfit to drive whilst under the influence of drink, he should be charged under s. 67 and not s. 68(1). The nature of the DPP's argument is normally relevant to the exercise of the power, on the assumption that the Court has such power, (that is the question whether or not the Court should exercise its discretion to impose an order of disqualification and for how long) and not to the rather different matter of the vesting of the power, (that is, the question as to whether the Court

has been vested with such a discretionary power). The third problem is that even if a s. 68(1) offence is one in connection with the driving of a motor vehicle, s. 42(1) itself provides that the Court may impose a disqualification order in any case **except where otherwise expressly provided by this Act**. What do these words mean? The said proviso is not intended to mean simply that the Court shall impose a disqualification order where it is so required as that would give it the same meaning as the other words in the section, that is "and shall, where so required by this Act." The said proviso must therefore mean something else. Its probable meaning is that where the Act expressly provides otherwise, then the question of whether the Court may impose a disqualification order is regulated by those otherwise provisions and not by s. 42(1). Section 68(2) is such a provision as it deals with (i) a second or subsequent conviction and (ii) an offence not in connection with the driving of a motor vehicle.

For these reasons, I am not persuaded that the DPP's construction is correct unless there are more positive indications in the Act that accords with the intention of the legislature.

In this respect, the DPP has advanced an argument to such effect. It is contended that if the saving clause fails to bring in the discretionary power under s. 42(1), then it brings in nothing and the Court will not have power to impose a period of disqualification under s. 68(2) longer than the mandatory period of 12 months. This result is plainly the direct opposite of what the legislature intended in enacting the saving clause. Assuming (which assumption I believe to be justified) that the legislature's intention is to give to the Court a discretionary power to impose a longer sentence than the minimum period of 12 months, there are, to my mind, two possible answers to this argument. The first is that the draftsman might have thought that the saving clause, as drafted, would achieve that intention, when it does not. The second is that the draftsman might have thought that the saving clause, as drafted, would be adequate to enable the Court, on a second or subsequent conviction, to impose a mandatory disqualification of 12 months and a longer period if it thinks fit. In other words, the draftsman might have intended to draft s. 68(2) as an enabling clause which is self-contained and self-sufficient. After all, s. 68(2) does vest in the Court a discretionary power not to impose the mandatory injunction if there are special reasons. Construed in this way, it would not be necessary for the Court to have to resort to any other statutory provision in respect of the discretionary component of the disqualification period.

It is, of course, not necessary for this Court to decide whether the first or the second answer is correct as the issue in this petition does not depend on either answer being the correct answer, so long as I am satisfied that a s. 68(1) offence is not an offence within the ambit of s. 42(1). I think that the opening words of s. 42(1) are sufficiently unambiguous for me to be so satisfied. In any case, s. 42(1) is still not attracted by s. 68(2) as s. 68(2) provides for a case which is expressly otherwise excepted from s. 42(1).

Accordingly, I am of the view that the Magistrate had no power to make a disqualification order against an offender on a first conviction under s. 68(1) of the Act. The said order imposed on the petitioner is set aside.

Also found at [1990] 2 CLJ 321